

**Desert Hospital and California Nurses Association,
American Nurses Association.** Case 21-CA-
30540

April 17, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Upon a charge filed on February 16, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 2, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 21-RC-19173. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On March 23, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 24, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 7, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain, but denies that the Union is a labor organization and that the unit is appropriate, and otherwise attacks the validity of the certification on the basis of its contentions in the representation proceeding that the Union is disqualified from representing the unit employees because of alleged supervisory participation and a schism in the organization, and on the basis of the Board's disposition of certain challenged ballots. In addition, in both its answer and its response to the Notice to Show Cause, the Respondent contends that it was denied due process and the right to a hearing on questions concerning representation by the hearing officer's and Board's rulings in the representation case.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

ceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an acute care hospital providing health care services with various facilities located in the Palm Springs, California area. During the 12-month period ending March 2, 1995, the Respondent, in conducting its business operations, purchased and received at its Palm Springs, California area facilities, products, goods, and materials valued in excess of \$50,000 directly from points outside the State of California, and derived gross revenues in excess of \$250,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held May 13, 1993, the Union was certified on January 31, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

¹ In its response to the Notice to Show Cause, the Respondent contends that we should reconsider and reverse the Board's prior rulings in the preelection proceeding in light of the Board's recent decisions in *Angelica Healthcare Services Group*, 315 NLRB 1320 (1995), and *Barre-National*, 316 NLRB 1320 (1995), regarding the right to a preelection hearing, and the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp.*, 114 S.Ct. 1778 (1994), regarding supervisory status. We reject these contentions. The Respondent was in fact afforded a preelection hearing on the issues raised, and its contentions that the hearing officer's various procedural rulings regarding subpoenas and the admissibility of evidence denied it due process were fully considered by the Board on review. Nothing in the Board's decisions in *Angelica* and *Barre* provide any basis to reconsider the Board's denial of the Respondent's request for review of the Acting Regional Director's Decision and Direction of Election or its motion to reopen the record in the representation proceeding. Nor has the Respondent offered anything to indicate that reconsideration is warranted in light of the Supreme Court's decision in *Health Care & Retirement*. The Respondent merely asserts that the "probability" that the Union is disqualified because of supervisory participation is "substantially increased" because of that decision, since, the Respondent asserts, even more of the Union's officials would now be deemed statutory supervisors. We find the Respondent's speculative and unsupported assertions an insufficient basis to reconsider the Board's prior rulings.

² We therefore deny the Respondent's requests that the complaint be dismissed and for attorneys' fees.

All registered nurses employed by the Employer at its facilities located at 1150 North Indian Canyon Drive, Palm Springs, California; 555 East Techevah Drive, Palm Springs, California; 1695 North Sunrise Way, Palm Springs, California; 68-325 Highway 111, Cathedral City, California; 13570 Palm Drive, Desert Hot Springs, California; and 1080 North Indian Canyon Drive, Palm Springs, California; including Associate Clinical Nurses; Clinical Nurses; Advanced Clinical Nurses; Nurse Clinicians; Clinical Nurses-Outreach; Clinical Nurse Specialists; Physician Referral Advisors; Quality Assurance Analysts; Clinical Nurses-Employee Occupational Health; Nurse Epidemiologists; Quality Assurance Reviewer-Home Health; Childbirth Educators; Operating Room Educators; Nurse Practitioners-Employee Occupational Health; Case Managers; Coordinators of GI Labs; Coordinators of Cardiac Care Services; Coordinators of Ophthalmology; Staff Development-QA Coordinators-Home Health; Coordinators of Patient Care SNF; and all non-scheduled or on-call employees who average at least four hours or more actual work per week during the last 13-week quarter prior to the eligibility date of the election; excluding Clinical Nurses-Desert and other temporary and traveling employees; other professional employees; office clerical employees; guards; and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About February 1, 1995, the Union, by letter, requested the Respondent to bargain, and since February 15, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 15, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Desert Hospital, Palm Springs, California, its officers, agents, successors, and assigns, shall

Cease and desist from

(a) Refusing to bargain with California Nurses Association, American Nurses Association as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All registered nurses employed by the Employer at its facilities located at 1150 North Indian Canyon Drive, Palm Springs, California; 555 East Techevah Drive, Palm Springs, California; 1695 North Sunrise Way, Palm Springs, California; 68-325 Highway 111, Cathedral City, California; 13570 Palm Drive, Desert Hot Springs, California; and 1080 North Indian Canyon Drive, Palm Springs, California; including Associate Clinical Nurses; Clinical Nurses; Advanced Clinical Nurses; Nurse Clinicians; Clinical Nurses-Outreach; Clinical Nurse Specialists; Physician Referral Advisors; Quality Assurance Analysts; Clinical Nurses-Employee Occupational Health; Nurse Epidemiologists; Quality Assurance Reviewer-Home Health; Childbirth Educators; Operating Room Educators; Nurse Practitioners-Employee Occupational Health; Case Managers; Coordinators of GI Labs; Coordinators of Cardiac Care Services; Coordinators of Ophthalmology; Staff Development-QA Coordinators-Home Health; Coordinators of Patient Care SNF; and all non-scheduled or on-call employees who average at least four hours or more actual work per week during the last 13-week quarter prior to the eligibility date of the election; excluding Clinical

Nurses-Desert and other temporary and traveling employees; other professional employees; office clerical employees; guards; and supervisors as defined in the Act.

(b) Post at its above facilities in the Palm Springs, California area, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with California Nurses Association, American Nurses Association as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All registered nurses employed by us at our facilities located at 1150 North Indian Canyon Drive, Palm Springs, California; 555 East Techevah Drive, Palm Springs, California; 1695 North Sunrise Way, Palm Springs, California; 68-325 Highway 111, Cathedral City, California; 13570 Palm Drive, Desert Hot Springs, California; and 1080 North Indian Canyon Drive, Palm Springs, California; including Associate Clinical Nurses; Clinical Nurses; Advanced Clinical Nurses; Nurse Clinicians; Clinical Nurses-Outreach; Clinical Nurse Specialists; Physician Referral Advisors; Quality Assurance Analysts; Clinical Nurses-Employee Occupational Health; Nurse Epidemiologists; Quality Assurance Reviewer-Home Health; Childbirth Educators; Operating Room Educators; Nurse Practitioners-Employee Occupational Health; Case Managers; Coordinators of GI Labs; Coordinators of Cardiac Care Services; Coordinators of Ophthalmology; Staff Development-QA Coordinators-Home Health; Coordinators of Patient Care SNF; and all nonscheduled or on-call employees who average at least four hours or more actual work per week during the last 13-week quarter prior to the eligibility date of the election; excluding Clinical Nurses-Desert and other temporary and traveling employees; other professional employees; office clerical employees; guards; and supervisors as defined in the Act.

DESERT HOSPITAL